Supreme Court, U.S.
FILED

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No.

In The

Supreme Court of the United States

October Term, 1996

RAYMOND M. MICHALOWSKI,

Petitioner,

vs,

BOARD OF REVIEW,
NEW JERSEY DEPARTMENT OF LABOR

Respondent.

Petition for a Writ of Certiori to the New Jersey Supreme Court

PETITION FOR A WRIT OF CERTIORI

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29 pp

QUESTIONS PRESENTED

1. Whether an employee who accepted an early retirement package should be denied unemployment benefits by the State when the employer played a definite role during the 45-day consideration period mandated by the Older Workers Benefit Protection Act in coercing the employee into taking early retirement and whether the State law regarding voluntariness as applied in early retirement is in a vacuum and in conflict with the Older Workers Benefit Protection Act.

2. Whether N.J.S.A. 43:21-16d that mandates without explanation *any money collected improperly as determined by a representative of the State must be returned regardless of the reason for the overpayment or the sum will be deducted from future benefits or collected as provided by law* is a violation of procedural Due Process and the Equal Protection Clause under the Fourteenth Amendment of the United States Constitution.

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Petitioner, Raymond Michalowski, prays that a Writ of Certiorari issue to review the judgment below.

OPINIONS BELOW

The unreported New Jersey Appellate Division opinion dated March 21,1997 is reproduced in the Appendix at App. 1a. The unreported decision of the Appeal Tribunal of the New Jersey Department of Labor dated June 6, 1995 is reproduced in the Appendix at App. 9a-13a.

STATEMENT OF JURISDICTION

The Order denying discretionary review of the judgment below by The New Jersey Supreme Court, the highest applicable state court, was entered on June 18, 1997 and reproduced in the Appendix at App. 1a. This Court has jurisdiction to review the judgment under U.S.C.A. 1257(3) "where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, . . . or laws of the United States . . . "

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FEDERAL:

The Fourteenth Amendment to the United States Constitution provides in part:

> Section 1 . . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Older Workers Benefit Protection Act of 1990 provides protection for those older workers contemplating the acceptance of severance packages to retire.

STATE:

N.J.S.A. 43:21-5(a) provides in part:

> An individual shall be disqualified for benefits:
>
> (a) For the week in which the individual has left work voluntarily without good cause attributable to such work and for each week thereafter until the individual becomes employed and works four weeks in employment . . . and has earned in employment at least six times the individual's weekly benefit rate, as determined in each case.

N.J.S.A. 43:21-7(c)(1) provides in part:

> (1) A separate account for each employer shall be maintained and this shall be credited with all the contributions which he has paid on his behalf . . . Benefits paid under some given benefits determination shall be charged against the account of the employer to whom such determination relates.

N.J.S.A.43:21-16d providing in essence:

> That any money collected improperly as determined by a representative of the State must be returned regardless of the reason for the overpayment.

STATEMENT OF THE CASE

This is an unemployment benefits case whereby petitioner Ray Michalowski was accused retroactively of quitting his job without good cause. As mandated by due process, the employer had been given the opportunity from the onset of a claim in May 1994 to oppose the award

of unemployment benefits and/or appeal the award of benefits. The employer chose not to exercise the right to appeal in May 1994. A year later the employer was given a "second bite" of the apple.

On May 8, 1995, a year after he was awarded benefits, petitioner was accused without any warning, notice or initial hearing that he was disqualified for benefits because he "quit . . . [his] job without good cause" on April 24, 1994 a year earlier. He was told to refund $6,942 in benefits received to the State and also threatened with liens if he did not arrange to pay the money. "Any money collected improperly must be returned regardless of the reason for the overpayment in accordance with N.J.S.A.43:21-16d." App. 14a-16a. Petitioner appealed. After an appeal hearing, the Appeals Examiner affirmed the new final decision of the Deputy on the voluntary leaving and on the refund issue.

In February 1994, Permacel was reducing its force and offered early retirement packages. Petitioner was almost 62 years old at the time with almost 39 years of continuous service to Permacel. Petitioner did not intend to accept the offer because he wanted to continue working for a few more years. Curiously, Permacel withdrew the offer and replaced it with another early retirement offer on March 8th with a deadline to accept by April 22, 1994. Petitioner decided not to accept this second offer as well. He wanted to work.

In early April, first, petitioner's manager told him "You don't have to do yours [objectives for the coming year] . . . I'll do it." Petitioner found this "strange" but he "was [still] not accepting the buyout."

On April 8, 1994 during the 45-day consideration period under the Older Workers Benefit Protection Act ("OWBPA") and two weeks before the deadline, petitioner was given the worst evaluation in his nearly 39 year career with the company.

Petitioner testified at the hearing that he had "no other choice":

> "Much to my disappointment and hurt . . . it was totally unbelievable. I have copies of appraisals. I have copies of that particular one written by the same man the year before giving me a promotion . . .

> "For 38 years I had great reviews and then bang! Then what came to my mind 'Oh, I guess they want me to take the buyout'. I had no other choice." Petitioner was "thoroughly convinced" that the bad evaluation he received would make him take the offer.

The company admitted that there was a dramatic drop in petitioner's evaluation rating (from a very good 2.5 to a low rating of 4.0) from the previous year. The company's agent admitted that the company was looking to do with less people and could resort to dropping an employee's rating to attain that goal.

> "The only thing that I can think of that might support something like that [to make employee take severance] . . . I'm not saying it is the case here, but we were looking to do more with less people. ...We were reducing the workforce and we were trying to do part of that with early buyouts . . . We were putting extra work on people because we were doing basically the same amount of work with less people . . . As I said we were trying to cut back the number of people for cost saving reasons and because the company felt that we could, and needed to, operate at a lower cost."

At the appeal hearing, petitioner also expressed his concern as to why after a year he was awarded benefits, he was deemed disqualified and this matter was being heard on appeal. The appeals examiner responded "I can't answer how they . . . I'm not part of the office here. They may have received a letter. I honestly don't know . . . I couldn't tell you that".

The Appeals Examiner although finding that the "poor performance evaluation . . . prompted his [petitioner's] decision to accept the early retirement package" ruled against petitioner. App. 9a-13a.

The petitioner appealed to the Board of Review which summarily affirmed the decision of the Appeals Tribunal. Thereafter, the Appellate Division affirmed and The New Jersey Supreme Court denied discretionary review.

REASONS FOR GRANTING CERTIFICATION

Because of the pervasiveness of so-called voluntary early retirement incentives, the issues presented have far reaching implications. This writ of certiorari should be granted because the guidance of this Court is crucial to advise the State of the constitutional defects in its unemployment compensation laws affecting the due process of its citizens and to resolve the State's conflict with the Older Workers Benefit Act that aims to protect both the older workers who want to retire and those who do not want to retire.

The pain and suffering endured by older workers discarded from their jobs is well documented. This Court must not allow further deprivation of entitled economic rights because of the arbitrary and capricious interpretation of "voluntarily" to interfere with the purpose of federal laws attempting to ease the pain of the older workers.

ARGUMENT

1. WHETHER AN EMPLOYEE WHO ACCEPTED AN EARLY RETIREMENT PACKAGE SHOULD BE DENIED UNEMPLOYMENT BENEFITS BY THE STATE WHEN THE EMPLOYER PLAYED A DEFINITE ROLE DURING THE 45-DAY CONSIDERATION PERIOD MANDATED BY THE OLDER WORKERS BENEFIT PROTECTION ACT IN COERCING THE EMPLOYEE INTO TAKING EARLY RETIREMENT AND WHETHER THE STATE LAW REGARDING VOLUNTARINESS AS APPLIED IN EARLY RETIREMENT IS IN A VACUUM AND IN CONFLICT WITH THE OLDER WORKERS BENEFIT PROTECTION ACT.

The issue presented involves the State's denial of unemployment benefits in which a federal statute played a role.

The fact that Congress was compelled to enact the Older Workers Benefit Protection Act of 1990 (OWBPA) is proof that older workers

do need protection to insure that their rights as employees are preserved and not compromised from negligent or intentional acts and/or omissions by employers. The spirit of this Act provides that the employees' voluntary acceptance of any early retirement incentive should be the prime concern. Otherwise, the Act passed for the good of the older workers could be used as a sword to coerce those older employees who want to work into accepting early retirement against their will.

Thus, objective evidence that proves that an employer played a role during the 45-day consideration period to coerce an employee into accepting the early retirement incentive should render the alleged voluntary acceptance as involuntary.

As do other state statutes throughout the country, the New Jersey statute N.J.S.A. 43:21-5(a) denies benefits if an employee has left work "voluntarily" without good cause attributable to his work. The vagueness of this statute allows for arbitrary and capricious decisions by the states as to whether to award or deny benefits, in general, and is repugnant to federal statutes as the OWBPA when it is mechanically applied to older workers who accept early retirement under coercion.

The Appeals Examiner found that the "poor performance evaluation . . . prompted his [petitioner's] decision to accept the early retirement package." App. 9a-13a. Had the Examiner considered the timing of this poor evaluation (which was presented at the hearing), right in the middle of petitioner's OWBPA mandated consideration period designed to insure voluntariness of acceptance, most likely the result would have been the award of benefits.

The legislative purpose in enacting OWBPA is being undermined by state unemployment benefits statutes that are applied in a vacuum. It would not be a burden to the states in cases dealing with early retirement to consider the actions of the employers during the mandated consideration period afforded to the workers under the OWBPA.

The Court should also consider New Jersey Statute N.J.S.A. 43:21-7(c)(1) and laws of other states that hold that the employer's contribution rate to the Unemployment Compensation Fund depends on

the amounts of unemployment benefits that are given to its former employees . . . "[b]enefits paid under a given benefit determination shall be charged against the account of the employer to whom such determination relates."

The constitutionality of this contribution rate statute is suspect because it creates a greater conflict of interest in employers to preserve their fund by punishing them with higher rates if benefits are awarded or rewarding them if benefits are not given out to its employees. Because of this conflict of interest claimants are not given a fair and impartial hearing. Any rational basis for such a contribution rate statute which on its face may seem reasonable is overshadowed by the impact it has on the due process rights of claimants.

The unconstitutionality could be cured by having benefits awarded from a single fund without individual contribution rates.

The unemployment statutes in New Jersey and in other states are not only in conflict with the intent and the purpose of awarding unemployment benefits but have rejected and/or ignored the congressional intent inherent in federal laws such as OWBPA which have been specifically crafted to protect the older worker.

2. WHETHER N.J.S.A. 43:21-16D PROVIDING THAT *ANY MONEY COLLECTED IMPROPERLY AS DETERMINED BY A REPRESENTATIVE OF THE STATE MUST BE RETURNED REGARDLESS OF THE REASON FOR THE OVERPAYMENT OR THE SUM WILL BE DEDUCTED FROM FUTURE BENEFITS OR COLLECTED AS PROVIDED BY LAW* WITH NO EXPLANATION IS A VIOLATION OF DUE PROCESS AND THE EQUAL PROTECTION CLAUSE UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

In *Mullane v. Central Hanover B.&T. Co., 339 U.S. 306, 314 (1950)* this Court held:

> "[A]ny proceeding which is accorded finality [requires] notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

Under this State statute, a claimant's benefits must be refunded before any hearing with no explanation and liens are threatened if payment is not made. App. 14a-16a. If the claimant does appeal, the employer gets "a second bite at the apple" on the original claim.

When petitioner asked why the case was reopened, the appeals examiner responded "I can't answer how they . . . I'm not part of the office here. They may have received a letter. I honestly don't know . . . I couldn't tell you that."

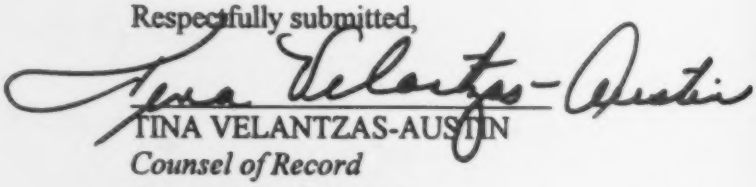
Yet, when fraud is an issue, under a state law claimant is afforded an "informal hearing at the division, after notice to the recipient of the benefits. This meeting is conducted in the local office by the Deputy of the division, and the recipient has the right to present evidence in his behalf." *Agresta v. Board of Review, 232 N. J. Super. 56,62 (1989), citing Malady v. Bd. of Review, Div. of Emp. Security, 166 N.J. Super. 523,533 (App. Div. 1979).*

Except for those accused of fraud, this law violates the Due Process and Equal Protection Rights under the Fourteenth Amendment of the United States Constitution of those claimants who are not accused of fraud. These claimants not accused of fraud are not allowed to present objections before their benefits are rescinded as mandated by *Mullane* and *Agresta* but those claimants accused of fraud are given notice and an informal hearing to defend themselves.

CONCLUSION

Petitioner Raymond Michalowski respectfully and fervently requests that this Court issue its Writ of Certiorari to address these important issues of national importance which impact all workers as they age.

Respectfully submitted,



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APPENDIX A - ORDER DENYING DISCRETIONARY REVIEW BY THE NEW JERSEY SUPREME COURT ENTERED JUNE 18, 1997.

SUPREME COURT OF NEW JERSEY
C-1210 September Term 1996
43,901

RAYMOND v. MICHALOWSKI,

Plaintiff-Petitioner,

v.

BOARD OF REVIEW, et al.,

Defendants-Respondents.

FILED

JUN 18 1997

/S/ Stephen W. Townsend
CLERK

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-461-95 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 17th day of June, 1997.

I hereby certify that the foregoing is a true copy of the original on file in my office.

/S/ Stephen W. Townsend

CLERK OF THE SUPREME COURT OF NEW JERSEY

/S/ Stephen W. Townsend
CLERK OF THE SUPREME COURT

APPENDIX B - OPINION OF THE NEW JERSEY APPELLATE DIVISION - DATED MARCH 21, 1997

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-461-95T3

RAYMOND M. MICHALOWSKI,

Claimant-Appellant,

v.

BOARD OF REVIEW, DEPARTMENT OF LABOR, STATE OF NEW JERSEY and PERMACEL CORP.,

Respondents-Respondents.

FILING DATE
APPELLATE DIVISION

MAR. 21, 1997

/S/ R. Emille Cox
Clerk

Argued: March 4, 1997 - Decided: March 21, 1997

Before Judges Michels and Kleiner

On appeal from the Board of Review, Department of Labor, State of New Jersey.

Tina Velantzas-Austin argued the cause for appellant.

Ellen A. Reichart, Deputy Attorney General, argued the cause for respondent Board of Review, Department of Labor, State of New Jersey (Peter Verniero, Attorney General of New Jersey, attorney; Mary C. Jacobson, Assistant Attorney General, of counsel; Ms. Reichart, on the brief).

No brief was submitted on behalf of respondent Permacel Corp.

Appendix B

PER CURIAM

Claimant Raymond M. Michalowski appeals from a decision of the Board of Review (Board) that affirmed a decision of the Appeal Tribunal holding him disqualified for unemployment compensation benefits under N.J.S.A. 43:21-5(a) as of April 24, 1994, on the ground that he left work voluntarily without good cause attributable to such work. Claimant also appeals the Board's affirmation of the Appeal Tribunal's determination that he was liable for a refund, in accordance with N.J.S.A. 43:21-16(d) and N.J.A.C. 12:17-10.2,[1] of the $6,942 he received as benefits for the weeks ending June 11, 1994 through December 3, 1994.

The Appeals Examiner found that claimant, who was employed by the respondent Permacel Corp. (Permacel) as a quality control supervisor for 38½ years, accepted a retirement incentive package offered by Permacel in 1994 and left his job. He also found that claimant was not in imminent danger of being laid off by Permacel. The

---

[1]We note that the Appeals Examiner apparently erred when he referred to N.J.A.C. 12:17-10.2, rather than N.J.A.C. 12:17-10.3 in reaching his conclusion. N.J.A.C. 12:17-10.2 refers to a waiver of repayment of improperly received unemployment benefits while N.J.A.C. 12:17-10.3 refers to the actual repayment of such benefits.

Appeals Examiner noted that although claimant received a poor performance evaluation which in turn prompted his decision to accept the retirement package, the evaluation was not sufficient cause for claimant to leave gainful employment. The Appeals Examiner, therefore, concluded that claimant left work without good cause attributable to his work and was disqualified for receipt of benefits pursuant to N.J.S.A. 43:21-5(a).

The Appeals Examiner further determined that claimant was liable to refund $6,942 to the Division of Unemployment and Temporary Disability Insurance pursuant to N.J.S.A.43:21-16(d). Relying upon Fisher v. Board of review, 123 N.J. Super. 263 (App. Div. 1973), the Appeals Examiner held that the refund was recoverable even if the claimant received the unemployment benefits in good faith. The decision of the Appeals Tribunal was affirmed by the Board and this appeal followed.

Claimant seeks a reversal of the decision of the Board and the entry of a judgment in his favor or, alternatively, a reversal and remand for a rehearing on all issues, contending that (1) his due process rights were violated in that he was not afforded a hearing before his award of

benefits was rescinded; (2) his due process rights were violated in that he did not knowingly waive the notice requirement on the refund issue at the Appeal Tribunal hearing of May 31, 1996, which was scheduled to determine only the issue of his voluntarily leaving his employment; (3) he was not given a full and impartial hearing before the Appeal Tribunal; and (4) he took forced early retirement for good reasons because of his health and imminent layoff. We disagree and affirm.

We are satisfied from our study of the record and arguments presented that substantial, credible evidence exists in the record to warrant the Board's findings that claimant left his work voluntarily without good cause attributable to such work when he accepted an early retirement benefit package and, therefor, was disqualified from receiving benefits under N.J.S.A. 43:21-5(a) as of April 24, 1994. We are also satisfied that there is sufficient, credible evidence to support the Board's determination that claimant was liable to refund $6, 942 received as benefits for the weeks ending June 11, 1994 through December 3, 1994 in accordance with N.J.S.A. 43:21-16(d) and N.J.A.C. 12:17-10.3. See Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 92-93 (1973); Associated Util. Services, Inc. v. Board of

Review, 131 N.J. Super. 584, 588 (App. Div. 1974). See also Domenico v. Board of Review, 192 N.J. Super. 284, 288 (App. Div. 1983); Vasquez v. Horn, 181 N.J. Super. 529. 533-34 (App. Div. 1981), certif. denied, 91 N.J. 196 (1982); Fischer v. Board of Review, 123 N.J. Super. 263, 266 (App. Div. 1973); Morgan v. Board if Review, 77 N.J. Super. 209, 213 (App. Div. 1962). In reaching this conclusion, we have considered "'the proofs as a whole,' with due regard to the opportunity of the one who heard the witnesses to judge of their credibility. . . ." Mayflower Sec. Co. V. Bureau of Sec., supra, 64 N.J. at 93 (citation omitted). Moreover, all of the law raised are clearly without merit. See R. 2:11-3(e) (1) (E).

Accordingly the decision of the Board affirming the decision of the Appeal Tribunal is affirmed substantially for the reasons expressed by Appeals Examiner Ronald Gitter in his written decision dated June 2, 1995.

I hereby certify that the foregoing is a true copy of the original on file in my office.

/S/ R. Emille Cox

Clerk

APPENDIX C - DECISION OF THE BOARD OF REVIEW
NO HEARING - DATED JULY 13, 1995

STATE OF NEW JERSEY
DEPARTMENT OF LABOR
BOARD OF REVIEW
CN-937
TRENTON, NJ 08625-0937

SS NUMBER: 152242985
BR DOCKET #: 95-B-03377-000-XO
AT DOCKET #: 95-A-12398-000-XO
DATE OF CLAIM: 05/08/94
DATE OF APPEAL: 06/09/95
MAILING DATE: 07/13/95

IN THE MATTER OF : RAYMOND M MICHALOWSKI

RAYMOND M MICHALOWSKI
411 MATCHAPONIX ROAD
JAMESBURG NJ 088310000

EMPLOYER: PERMACEL CORP

The claimant filed a timely appeal from a decision of the Appeal Tribunal (95-A-12398-000-XO) mailed 06/06/95.

This matter is reviewed on the record below.

FINDINGS OF FACT AND OPINION:

The Findings of Fact and Opinion as developed by the Appeal Tribunal and the allegations of the appellant have been carefully examined.

Since the appellant was given a full and impartial hearing and complete opportunity to offer any and all evidence, there is no valid ground for a further hearing.

On the basis of the record below, we agree with the decision reached.

Appendix C

DECISION:

The decision of the appeal tribunal (95-A-12398-000-XO) is affirmed.

BOARD OF REVIEW

/s/ VINCENT C. MARTORANO

/S/ JOSEPH STEBER

/S/ CORNELIA A. CALDERONE

APPENDIX D - DECISION OF THE APPEAL TRIBUNAL OF THE NEW JERSEY DEPARTMENT LABOR DATED JUNE 6, 1995

DECISION OF THE APPEAL TRIBUNAL

State of New Jersey
Department of Labor
Division of Programs
APPEAL TRIBUNAL
CN 936 LABOR BUILDING
Trenton, NJ 08625-0936

S.S. # 152242985
Docket # 95-A12398-000-XO
LO 956 PC 10
Date of Claim 05/08/94
Appellant claimant
Date Det Mailed 05/08/95
Date AT Dec Mailed 06/06/95

IN THE MATTER OF : RAYMOND M MICHALOWSKI

RAYMOND M MICHALOWSKI
411 MATCHAPONIX ROAD
JAMESBURG NJ 088310000

EMPLOYER: PERMACEL CORP

The claimant appealed on 5/11/95 from a determination of the Deputy, mailed on 5/8/95, holding him disqualified for benefits from 4/24/94 on the ground that he left work voluntarily without good cause attributable to such work.

The claimant appealed on 5/11/95 from a Request for Refund from the Director, mailed on 5/8/95, holding him liable to refund the sum of $6,942.00 received as benefits for the weeks ending 6/11/94 through 12/3/94 as provided by N.J.S.A. 43:21-16(d).

The claimant and the employer appeared.

Appendix D

FINDING OF FACT

The claimant was employed by the above-named employer as a Quality Control Supervisor for a 38½ year period through 4/29/94, when he left the work to retire.

The claimant decided to retire when offered an incentive package by the employer. The claimant was offered a year's salary, continuing health benefits and the employer would increase their contribution to the claimant's pension. Continuing work was available to the claimant if he did not accept the package. The claimant decided to accept the package when he received a poor performance review.

The claimant received benefits for the weeks ending 6/11/94 through 12/3/94 in the amount of $347.00/wk for a total of $6,942.00.

OPINION:

N.J.S.A 43:21-5 reads as follows:

> An individual shall be disqualified for benefits:
>
> (a) For the week in which the disqualified individual has left work voluntarily without good cause attributable to such work, and for each week thereafter until the individual becomes reemployed and works four weeks in employment which may include employment for the Federal Government and has earned in employment at least six times the individual's weekly benefit rate, as determined in each case.

In Krauss v. Karagheusian, Inc., 13 N.J. 447, 464 (1953), the court held:

> A claimant who has the choice of retiring on a pension or continuing at the work and chooses retirement, leaves work voluntarily without good cause attributable to such work.

The Board of Review held in BR-6375 that:

Appendix D

Good cause exists when a claimant leaves a job where a layoff is imminent.

It seems from the substantial evidence gathered at the hearing that the claimant left his job in order to accept a retirement incentive package offered by the employer. The claimant was not in danger of imminent layoff if he did not accept the package. Therefore in accordance with the above cited Board of Review Decisions, the claimant left work without good cause attributable to such work and is disqualified for benefits as of 4/24/94 as provided under N.J.S.A. 43:21-5(a). The fact that a poor performance review prompted his decision to accept the package is not sufficient cause to leave gainful employment to join the ranks of the unemployed.

N.J.S.A 43:21-16(d) provides:

"When it is determined by a representative or representatives designated by the Director of the Division of Unemployment and Temporary Disability Insurance of the Department of Labor of the State of New Jersey that any person whether (i) by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (whether or not such nondisclosure or misrepresentation was known or fraudulent), or (ii) for any other reason, has received any sum as benefits under this chapter (N.J.S.A. 43:21-1 et seq.) while any conditions for the receipt of benefits imposed by this chapter (N.J.S.A. 43:21-et seq.) were not fulfilled in his case, or while he was disqualified from receiving benefits, or while otherwise not entitled to receive such sum as benefits, such person unless the Director (with the concurrence of the controller) directs otherwise by regulation, shall be liable to repay those benefits in full."

"A refund is recoverable even if the claimant receives unentitled benefits in good faith." Fisher vs. Board of Review, 123 Super. 263 (App. Div. 1973).

N.J.A.C. 12:17-10.2 provides for the waiver of debt if (1) the claimant did not misrepresent or withhold a material fact in obtaining benefits; and (2) the claimant is either deceased or permanently disabled.

Appendix D

Physician's proof of death or disability (Social Security Disability Award Certificate, Physician's Statement or Death Certificate) must accompany the request to the Director, Division of Unemployment and Disability Insurance.

As the claimant has received benefits for the weeks ending 6/11/94 through 12/3/94, and he is disqualified for benefits for that time period, the claimant is liable to refund the benefits received.

The claimant is liable for refund in the sum of $6,942.00, received as benefits for the weeks ending 6/11/94 through 12/3/94, in accordance with N.J.S.A. 43:21-16(d) and N.J.S.A. 12:17-10.2, unless the Director directs otherwise by regulation.

DECISION:

The claimant is disqualified for benefits under N.J.S.A. 43:21-5(a) as of 4/24/94, as he left work voluntarily without good cause attributable to such work.

The determination of the Deputy is affirmed.

The claimant is liable for refund in the sum of $6,942.00, received as benefits for the weeks ending 6/11/94 through 12/3/94, in accordance with N.J.S.A. 43:21-16(d) and N.J.S.A. 12:17-10.2, unless the Director directs otherwise by regulation.

The determination of the Director is affirmed.

Appendix D

APPEAL : 5/11/95
HEARING : 5/31/95
DATED : 6/02/95
TYPED : 6/05/95
UA

/s/ RONALD GITTER
Appeals Examiner I

RG:ecs
cc:
L.O. 956
RAYMOND M MICHALOWSKI
PERMACEL-CORP-
REFUND PROCESSING SECTION

APPENDIX E - REQUEST FOR REFUND OF UNEMPLOYMENT BENEFITS

STATE OF NEW JERSEY
DEPARTMENT OF LABOR
CN 951
TRENTON, NJ 08625-0951

REQUEST FOR REFUND OF UNEMPLOYMENT BENEFITS

SOCIAL SECURITY NO.	152-24-298
DATE OF CLAIM	05/08/97
PROGRAM CODE	10
LOCAL OFFICE NO.	956
DATE OF MAILING	05/08/95
TOTAL DEBT	6,942.00

RAYMOND M. MICHALOWSKI
RD 1 BOX 356 N
JAMESBURG, NJ 08831

1. You were not eligible for the unemployment benefits listed on the back of this form because:

   YOU QUIT YOUR JOB WITHOUT GOOD CAUSE

2. Any money collected improperly must be returned regardless of the reason for the overpayment in accordance with N.J.S.A. 43:21-16d.

3. **Appeal Procedure:** This is a request for Refund and Repayment of Unemployment Benefits previously paid to you. If you disagree with this decision you must appeal in writing or in person to your local unemployment insurance claims office within ten days of the date of mailing of this notice. If you do not appeal within days this determination will become final.

Procediminiento Para Apelar: Esto es una demanda por un reembolso y devolucio´n de Beneficios por Desempleo previamente pagado a usted. Si usted no esta´ de acuerdo con esta decisio´n debe apelar por escrito o´ en persona a la oficina de Seguro por Desempleo dentro de diez (10) di´as de la fecha en que se envio´ este aviso. Si usted no apela dentro de diez (10) di´as, esta determinacio´n sera´ definitiva.

Si´ no habla Ingle´s por favor pida que le traduzcan este formulario inmediatamente.

4. **Repayment Options:**
   a. Full Payment Option: Make your check or money order payable to: "NJ Employment Security Agency" - include your social security number - do not send cash. Mail to the above address.

   b. Installment Option: Call 609-292-0030 or write to the above address to make arrangements.

5. **Collection Procedures** - If total debt is not paid:
   * Current of future benefits for which you may be eligible will be used to offset any outstanding principal overpayment in accordance with N.J.A.C. 12:17-10.3.
   * Any money due you from a NJ Income Tax Refund of Homestead Rebate may be withheld to repay this debt.
   * A Certificate of Debt (COD) may be filed with the Superior Court of New Jersey. This action will cause interest charges to be added to your debt.

6. **Waiver of Debt:** N.J.A.C. 12:17-10.2 allows for the waiver of recovery of debt if the debtor is deceased or permanently disabled and did not misrepresent or withhold a material fact to obtain benefits. Proof of death (Death Certificate) or permanent disability (Social Security Disability Award Certificate or Physician's diagnosis of permanent disability) should accompany your waiver request. If any of the benefits involved in the

overpayment are federal benefits paid under the provisions of the Emergency Unemployment Compensation Act of 0991, you will find an enclosure describing additional waiver provisions of that law.

/S/ M. P. Malloy
MICHAEL P. MALLOY
Director